

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

THOMAS LAUMANN, FERNANDA  
GARBER, ROBERT SILVER, DAVID  
DILLON, GARRETT TRAUB, and PETER  
HERMAN, representing themselves and all  
others similarly situated,

Plaintiffs,

v.

NATIONAL HOCKEY LEAGUE, et al.,

Defendants

12-cv-1817 (SAS)

FERNANDA GARBER, MARC LERNER,  
DEREK RASMUSSEN, ROBERT SILVER,  
GARRETT TRAUB, and VINCENT  
BIRBIGLIA, representing themselves and all  
others similarly situated,

Plaintiffs,

v.

OFFICE OF THE COMMISSIONER OF  
BASEBALL, et al.,

Defendants

12-cv-3704 (SAS)

ECF Cases

**REDACTED**

**DECLARATION OF EDWARD A. DIVER**

I, EDWARD A. DIVER, declare as follows:

I am a partner in the law firm of Langer, Grogan & Diver P.C. and counsel for Plaintiffs in the above-captioned matters. I submit this Declaration in support of Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment.

1. Attached hereto as Exhibit 1 is a true and correct copy of excerpts from a document produced by the MLB Defendants at Bates number MLB0031332 containing emails regarding "MLB.tv Subscribers – 2010."

2. Attached as Exhibit 2 is a true and correct copy of excerpts from a document produced by the NHL Defendants at Bates number NHL0000036 entitled "Lex Scripta."

3. Attached as Exhibit 3 is a true and correct copy of excerpts from a document produced by the MLB Defendants at Bates number MLB0276292 containing the May 16, 1979, minutes of the Joint Meeting of the Major Leagues.

4. Attached as Exhibit 4 is a true and correct copy of excerpts of a document produced by the MLB Defendants at Bates number MLB0013049 entitled "Television Agreement among National League Clubs," dated February 3, 1956.

5. Attached as Exhibit 5 is a true and correct copy of a document [REDACTED]

[REDACTED]

[REDACTED]

6. Attached as Exhibit 6 is a true and correct copy of a document produced by the MLB Defendants at Bates number MLB0484847 dated February 6, 1981, from A.E. Patterson to Tom Villante attaching a letter from Tom McCoy to Tom Villante dated February 2, 1981.

7. Attached as Exhibit 7 is a true and correct copy of excerpts from the minutes of the December 9, 1982, Annual Meeting of Major League Baseball produced by the MLB Defendants at Bates number MLB0276260.

8. Attached as Exhibit 8 is a true and correct copy of excerpts from the minutes of the February 23, 1982, NHL Governors' Meeting produced by the NHL Defendants at Bates number NHL1533048.

9. Attached as Exhibit 9 is a true and correct copy of excerpts from a document produced by the NHL Defendants at Bates number NHL3188561 entitled "ESPN, Inc. Agreement."

10. Attached as Exhibit 10 is a true and correct copy of excerpts from a document produced by the MLB Defendants at Bates number MLB0393441 containing a draft memorandum by Chris Tully entitled "Territorial Adjustments for MLB Extra Innings/OOM Pckg Distribution."

11. Attached as Exhibit 11 is a true and correct copy of excerpts from the April 2007 Amended agreement between DirecTV and the Office of the Commissioner of Baseball, produced by the DirecTV Defendants at Bates number DTV-SP0094027.

12. Attached as Exhibit 12 is a true and correct copy of excerpts from the April 2007 agreement between In Demand, LLC and the Office of the Commissioner of Baseball produced by the Comcast Defendants at Bates number COM-00000651 entitled Rights Agreement between the Office of the Commissioner of Baseball and In Demand L.L.C.

13. Attached as Exhibit 13 is a true and correct copy of a document produced by the DirecTV Defendants at Bates number DTVSN-SP0077358 containing emails bearing the subject "Comcast Proposal for FSNP Launch in Eastern PA."

14. Attached as Exhibit 14 is a true and correct copy of excerpts from a document produced by the NHL Defendants at Bates number NHL1467218 entitled “History of the New York Islanders Television Territory.”

15. Attached as Exhibit 15 is a true and correct copy of excerpts from a native Microsoft Excel document produced by the Comcast Defendants at Bates number COM-034956 containing financial data.

16. Attached as Exhibit 16 is a true and correct copy of the contents of a native Microsoft Excel document produced by the MLB Defendants at Bates number MLB0498082 entitled “Local MLB TV RSN Deals as of 1/31/13.”

17. Attached as Exhibit 17 is a true and correct copy of excerpts from a document produced by the NHL Defendants at Bates number NHL03655387 containing financial data from fiscal year 2012.

18. Attached as Exhibit 18 is a true and correct copy of excerpts from a native Microsoft Excel document produced by the DirecTV Defendants at Bates number DTVSN-SP0044917.

19. Attached as Exhibit 19 is a true and correct copy of excerpts from a native Microsoft PowerPoint document produced by the MLB Defendants at Bates number MLB0409362 entitled “Negotiation of Telecast Deals.”

20. Attached as Exhibit 20 is a true and correct copy of excerpts from the Minutes of the November 9, 1993, National League Executive Committee Telephone Conference Call produced by the MLB Defendants at Bates number MLB1001759.

21. Attached as Exhibit 21 is a true and correct copy of excerpts from the Minutes of the March 1, 1994, Special Meeting of the National League produced by the MLB Defendants at Bates number MLB1001763.

22. Attached as Exhibit 22 is a true and correct copy of excerpts from the Minutes of the Meeting of the Major League Executive Council, dated June 13, 2001, produced by the MLB Defendants at Bates number MLB014771.

23. Attached as Exhibit 23 is a true and correct copy of a document produced by the MLB Defendants at Bates number MLB0506042 entitled “Hot TV Topics.”

24. Attached as Exhibit 24 is a true and correct copy of a document produced by the MLB Defendants at Bates number MLB06631 entitled “Re: Request for Information – MLB Extra Innings and MLB.TV.”

25. Attached as Exhibit 25 is a true and correct copy of a document produced by the NHL Defendants at Bates number NHL1402523 entitled “DirecTV Executive Summary for the NHL.”

26. Attached as Exhibit 26 is a true and correct copy of a document produced by the MLB Defendants at Bates number MLB0502176 regarding “MLBXI (non-exclusive) Draft” and containing handwritten notes.

27. Attached as Exhibit 27 is a true and correct copy of a document produced by the Comcast Defendants at Bates number COM-00071248 containing December 2006 emails regarding “MLB update.”

28. Attached as Exhibit 28 is a true and correct copy of excerpts from a document produced by the MLB Defendants at Bates number MLB0420053 containing emails discussing pricing for the 2010 MLB Extra Innings package.

29. Attached as Exhibit 29 is a true and correct copy of a document produced by the MLB Defendants at Bates number MLB0214536 entitled “Overview of In-Market Live-Streaming.”

30. Attached as Exhibit 30 is a true and correct copy of excerpts from a document produced by the MLB Defendants at Bates number MLB038434 containing emails regarding “mlbxi/mlbtv.”

31. Attached as Exhibit 31 is a true and correct copy of excerpts from a document produced by the MLB Defendants at Bates number MLB0337817 containing draft minutes for the January 12, 2010 MLBE Board Meeting and containing handwritten notes.

32. Attached as Exhibit 32 is a true and correct copy of excerpts from the Minutes of the October 4, 1963, Special Meeting of the National League produced by the MLB Defendants at Bates number MLB276038.

33. Attached as Exhibit 33 is a true and correct copy of a document produced by the MLB Defendants at Bates number MLB038187 containing Robert Bowman’s June 21, 2006, response to an email from Robert DuPuy.

34. Attached as Exhibit 34 is a true and correct copy of excerpts from a document produced by the NHL Defendants at Bates number NHL0000742 summarizing the New Jersey Devils broadcast agreements.

35. Attached as Exhibit 35 is a true and correct copy of excerpts from a document produced by the NHL Defendants at Bates number NHL0019344 entitled “Building League Scale to Drive Incremental Revenue,” dated September 14, 2007.

36. Attached as Exhibit 36 is a true and correct copy of a document produced by the NHL Defendants at Bates number NHL02261826 containing September 2012 emails regarding the [REDACTED]

37. Attached as Exhibit 37 is a true and correct copy of a document produced by the MLB Defendants at Bates number MLB0370253 containing a letter dated March 11, 1982, from John Fetzer to Tom Villante.

38. Attached as Exhibit 38 is a true and correct copy of excerpts from the transcript of the deposition of Gary Bettman on December 19, 2013.

39. Attached as Exhibit 39 is a true and correct copy of excerpts from the transcript of the deposition of Bob Bowman on November 6, 2013.

40. Attached as Exhibit 40 is a true and correct copy of excerpts from the transcript of the deposition of Commissioner Selig on January 3, 2014.

41. Attached as Exhibit 41 is a true and correct copy of excerpts from the transcript of the deposition of William Daly on October 30, 2013.

42. Attached as Exhibit 42 is a true and correct copy of excerpts from the transcript of the deposition of Robert DuPuy on October 23, 2013.

43. Attached as Exhibit 43 is a true and correct copy of excerpts from the transcript of the deposition of John Henry on January 12, 2014.

44. Attached as Exhibit 44 is a true and correct copy of excerpts from the transcript of the deposition of Susan Hilgefort September 20, 2013.


45. Attached as Exhibit 45 is a true and correct copy of excerpts from the transcript of the deposition of John Tortora on October 8, 2013.

46. Attached as Exhibit 46 is a true and correct copy of excerpts from the transcript of the deposition of Christopher S. Tully on November 22, 2013.

47. Attached as Exhibit 47 is a true and correct copy of excerpts from the transcript of the deposition of Phillip I. Weinberg on October 18, 2013.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed May 24, 2014, in Philadelphia, Pennsylvania.

  
Edward A. Diver